




Federal Aviation Administration

Memorandum

Date: **NOV 18 2009**

To: Management Board

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Subject: Confidential Financial Disclosure Report (OEG-450) Filers

The Office of Government Ethics recently advised agencies to take measures to reduce the number of Confidential Financial Disclosure Report (OGE-450) filers. Requiring employees to file unnecessarily puts a burden on them and takes them away from their regular duties. The FAA has over 10,000 OGE-450 filers. FAA Order 3750.7, Ethical Conduct and Financial Disclosure, requires managers to determine whether their employees must file. I have prepared the attached guidance to assist management in making these determinations, and to avoid unnecessary inclusion of employees who should not file.

FAA employees should not be required to file the disclosure report when they are unlikely to be involved in a real or apparent conflict of interest, when they are subject to a substantial degree of supervision and review, or when they exercise control over matters which are inconsequential to the agency's integrity. Exclusion from filing is also appropriate when an employee only exercises control over matters that have a low dollar threshold, such as the small purchase cardholders with single transaction limits of \$2,500. In the past, a number of these cardholders have been required to file even though they are subject to a high degree of supervision.

This determination does not preclude individual managers, with the concurrence of a Designated Ethics Counselor (DEC), from requiring an employee to file the Report when, in the manager's judgment, the employee has duties involving the exercise of significant independent judgment over matters that could impact the integrity of the agency. It also does not preclude managers, with DEC concurrence, from excluding an employee or group of employees from being required to file when the requirements are not met.

Managers are reminded that employees need not file a Financial Disclosure Report in order to be required to take annual ethics training.

Attachment

**FAA Confidential Financial
Disclosure Report Filer Defined**

Authority: The Ethics in Government Act of 1978 and FAA Order 3750.7, Ethical Conduct and Financial Disclosure, which implements the Office of Government Ethics' regulations and sets forth the procedures and responsibilities for administering the agency's financial disclosure program.

I. Excluded from filing

- ▶ Purchase card holders with a single transactional limit of \$2,500
- ▶ Payband E and below
- ▶ Unless –
 - Position is identified in Part II below, or
 - Management provides written justification to the ethics official pursuant to Part II below, specifying why the individual's duties and responsibilities require them to file a Confidential Financial Disclosure Report (OGE-450).

II. Who must file

A. Employees whose duties and responsibilities require the employee to:

1. Participate personally and substantially

Definition/Example: Personal and substantial participation occurs when an employee participates in a particular matter through: direct involvement; direct and active supervision of subordinates' involvement; decision; approval; disapproval; recommendation; investigation; or giving advice. Consider whether the employee's decision is independent or accepted with little or no review by the supervisor. A decision is substantial even if it does not determine the outcome, i.e., when an employee's participation is significant to the success or failure of the matter. Personal and substantial participation does not include general knowledge, perfunctory involvement, or involvement in an administrative or peripheral issue relating to the particular matter.

and

2. Take a Government action, through decision or the exercise of significant judgment **without substantial supervision and review**, regarding:

- a. Contracting or procurement, regardless of payband.

Example 1: Small purchase card holders are presumed not to file an OGE-450 as noted above in Section I unless management provides written justification to the ethics official why the individual's duties and responsibilities require them to file an OGE-450.

Example 2: The duties and responsibilities of the following positions require them to file an OGE-450: Procuring Contracting Officer, the Source Selection Official, a member of the Source Selection Evaluation Board, Financial or Technical Evaluation Team, Integrated Products Team(IPT) Lead, Products Team Lead (or deputy), Program Manager, Project or Program Lead (or deputy), Administrative Contracting Officer (including business manager), Real Estate Contracting Officer, Contracting Officer Technical Representative (COTR), Center of Excellence Program Manager, Resident Engineer, Delivery Order (DO) Lead, Grants Officer, Principal Investigator on a Cooperative Research and Development Agreement (CRDA) that results in a procurement, and Property Disposal Officer. Do not focus on the title listed but on the duties and responsibilities of positions listed.

- b. Administering or monitoring grants, subsidies, licenses, or other Federally-conferred financial or operational benefits.

Example 1: An H/I payband employee at an independent grant-making agency conducts the initial agency review of grant applications from nonprofit organizations and advises the Director for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Director before the Director decides what grants to award. Because his work is subject to "substantial supervision and review," the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary.

Example 2: Pat's duties involve assisting in the review of applications, determining relevance to airport improvement programs, and making funding recommendations. Pat also manages a portfolio of already funded grant applications. In particular, Pat is involved directly in making funding recommendations for specific airport improvement grants. Pat's supervisor typically accepts these recommendations without further clarification. Such independent stewardship and the ability to affect the financial interest of outside regulated entities would be the basis for designating Pat as an OGE-450 filer.

- c. Regulating or auditing any non-Federal entity.

Example: This includes but is not limited to employees who are Aviation Safety and Drug Abatement Inspectors.

- d. Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity.

- e. Investigating or prosecuting violations of criminal or civil law.

Example: A hazardous materials investigator conducts investigations with substantial independence, and decides what information will be contained in the agency's enforcement investigative report. Because he participates personally and substantially through the exercise of significant judgment in investigating hazardous materials violations, and because his work is not substantially supervised, the investigator should be required to file an OGE-450.

- f. Representing the United States in litigation or other proceedings.

Example: This includes but is not limited to agency attorneys.

- g. Scientific or social science research, when the research will have a direct and substantial effect on the financial interests of non-Federal entities.

Example: This includes but is not limited to employees who are Principal Investigators on Cooperative Research and Development Agreements.

- B. Employees serving in any other position that an Agency Designated Ethics Counselor determines requires the incumbent to file to prevent a conflict of interest, appearance of favoritism, or loss of impartiality.